

*Complainant* in a civil penalty action means the proponent of the civil penalty in the FAA.

*FAA decisionmaker* means the Associate Administrator for Commercial Space Transportation, or the Administrator of the Federal Aviation Administration, acting in the capacity of the decisionmaker on appeal; or a person who has been delegated the authority to act for the FAA decisionmaker. As used in this part, the FAA decisionmaker is the official authorized to issue a final decision and order of the Secretary in an action.

*Mail* means U.S. first class mail, U.S. certified mail, U.S. registered mail, or an express courier service.

*Party* means the respondent or the complainant.

*Personal delivery* includes hand-delivery or use of a same-day messenger service. “Personal delivery” does not include the use of Government inter-office mail service.

*Properly addressed* means using an address contained in agency records; a residential, business, or other address used by a person on any document submitted under this part; or any other address determined by other reasonable and available means.

*Respondent* means a person who has been charged with a violation.

**§ 406.105 Separation of functions for prosecuting civil penalties and advising the FAA decisionmaker.**

(a) *Agency attorney.* The authority to prosecute civil penalties within the FAA is exercised by an agency attorney in accordance with § 406.9.

(1) The following officials have the authority to act as the agency attorney under this part: The Deputy Chief Counsel; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel for Regulations; the Assistant Chief Counsel for Europe, Africa, and Middle East Area Office; each Regional Counsel; and each Center Counsel. This authority may be delegated further.

(2) An agency attorney may not include:

(i) The Chief Counsel or the Assistant Chief Counsel for Litigation;

(ii) Any attorney on the staff of the Assistant Chief Counsel for Litigation who advises the FAA decisionmaker re-

garding an initial decision or any appeal to the FAA decisionmaker; or

(iii) Any attorney who is supervised in a civil penalty action by a person who provides such advice to the FAA decisionmaker in that action or a factually-related action.

(b) *Advisors to the FAA decisionmaker.*

(1) The Chief Counsel, the Assistant Chief Counsel for Litigation or an attorney on the staff of the Assistant Chief Counsel for Litigation, will advise the FAA decisionmaker regarding an initial decision or any appeal of an action to the FAA decisionmaker.

(2) An agency employee engaged in the performance of investigative or prosecutorial functions must not, in that case or a factually-related case, participate or give advice in a decision by the administrative law judge or by the FAA decisionmaker on appeal, except as counsel or a witness in the public proceedings.

**§ 406.107 Appearances of parties, and attorneys and representatives.**

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party.

(1) An attorney or representative who represents a party must file a notice of appearance in the action with the Docket Management System and must serve a copy of the notice of appearance on each other party before participating in any proceeding governed by this subpart.

(2) The attorney or representative must include his or her name, address, and telephone number in the notice of appearance.

(3) That attorney or representative in any proceeding governed by this subpart may examine the party.

(4) Service of a document on the party’s attorney or representative is considered to be service on the party.

(c) An agency attorney represents the complainant.

**§ 406.109 Administrative law judges—powers and limitations.**

(a) *Powers of an administrative law judge.* In accordance with the rules of

this subpart, an administrative law judge may:

- (1) Give notice of, and hold, pre-hearing conferences and hearings;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas authorized by law and requested by the parties;
- (4) Rule on offers of proof;
- (5) Receive relevant and material evidence;
- (6) Regulate the course of the hearing in accordance with the rules of this subpart;
- (7) Hold conferences to settle or to simplify the issues by consent of the parties;
- (8) Dispose of procedural motions and requests; and
- (9) Make findings of fact and conclusions of law, and issue an initial decision.

(b) *Duties to maintain the record.* (1) The administrative law judge must file with the DMS, or instruct the party to file with the DMS, a copy of each document that is submitted to the administrative law judge that has not been filed with DMS, except the portions of those documents that contain confidential information.

(2) The administrative law judge must file with the DMS a copy of each ruling and order issued by the administrative law judge, except those portions that contain confidential information.

(3) The administrative law judge must file with the DMS, or instruct the court reporter to file with the DMS, a copy of each transcript and exhibit, except those portions that contain confidential information.

(4) The administrative law judge must maintain any confidential information filed in accordance with §406.117 and deliver it to the Assistant Chief Counsel for Litigation when the administrative law judge no longer needs it.

(c) *Limitations on the power of the administrative law judge.* The administrative law judge may not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right pursuant

to §406.173(c). This section does not preclude an administrative law judge from issuing an order that bars a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding.

(d) *Disqualification.* The administrative law judge may disqualify himself or herself at any time. A party may file a motion, pursuant to §406.141(f)(8), requesting that an administrative law judge be disqualified from the proceedings.

#### §406.111 Signing documents.

(a) *Signature required.* The party, or the party's attorney or representative, must sign each document tendered for filing or served on each party.

(b) *Effect of signing a document.* By signing a document, the party, or the party's attorney or representative, certifies that he or she has read the document and, based on reasonable inquiry and to the best of that individual's knowledge, information, and belief, the document is—

- (1) Consistent with these rules;
- (2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and
- (3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions.* If an individual signs a document in violation of this section, the administrative law judge or the FAA decisionmaker must:

- (1) Strike the pleading signed in violation of this section;
- (2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;
- (3) Deny the motion or request signed in violation of this section;
- (4) Exclude the document signed in violation of this section from the record;
- (5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or